



WP No. 115362 of 2019

**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH
DATED THIS THE 10TH DAY OF JUNE, 2022**



BEFORE

**THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ
WRIT PETITION NO. 115362 OF 2019 (GM-POLICE)**

BETWEEN:

SHRI. SUPRIT ISHWAR DIVATE

...PETITIONER

(BY SRI. SANTOSH P. PUJARI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS
PRINCIPAL SECRETARY
DEPARTMENT OF HOME AFFAIRS
VIDHANA SOUDHA, BENGALURU-560001
2. THE SUPERINTENDENT OF POLICE
BELAGAVI, SUBHASH NAGAR
BELAGAVI-590016.
3. THE POLICE SUB INSPECTOR
ANKALI POLICE STATION
TQ: CHIKODI,
DIST: BELAGAVI-591109.
4. THE POLICE SUB INSPECTOR
CHIKODI POLICE STATION,
TQ: CHIKODI,
DIST: BELAGAVI-591201.

Digitally signed
by POORNIMA
SHIVANNA
Location: HIGH
COURT OF
KARNATAKA

... RESPONDENTS

(BY SRI. PRAVEEN K. UPPAR, HCGP)



WP No. 115362 of 2019

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF MANDAMUS OR ANY OTHER WRIT OR DIRECTIONS DIRECTING THE RESPONDENTS TO GRANT/SANCTION COMPENSATION OF RS.25,00,000/- (RUPEES TWENTY FIVE LAKHS ONLY), FOR THE LOSS OF REPUTATION, ILLEGAL DETENTION AND ILLEGAL HANDCUFFING OF THE PETITIONER, EVEN PRIOR TO THE PETITIONER BEEN PROVED GUILTY IN A EXCLUSIVELY BAILABLE OFFENCE UNDER THE PROVISION OF NEGOTIABLE INSTRUMENT ACT, 1881 AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 19.4.2022, THIS DAY, THE COURT THROUGH VIDEO CONFERENCE PRONOUNCED THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking for the following reliefs:

- a. *Issue a writ in the nature of mandamus or any other writ or directions directing the Respondents to grant/sanction compensation of Rs.25,00,000/- (Rupees Twenty Five Lakhs only), for the loss of reputation, illegal detention and illegal handcuffing of the petitioner, even prior to the Petitioner been proved guilty in a exclusively bailable offence under the provision of Negotiable Instrument Act, 1881;*
- b. *Issue a writ in the nature of mandamus or any other writ or directions directing the Respondents, to ensure that the laws, rules, regulations, circulars, notifications etc., that have been issued by the Central Government Agencies & the State Government Agencies & the directions of the Hon'ble Apex Court & this Hon'ble Court are abided, prior to arresting the petitioner or calling the petitioner to the Police Station on the pretext of enquiry etc.*
- c. *Pass such other order or orders as the Hon'ble Court may deem fit in the facts and circumstances of the case.*



WP No. 115362 of 2019

2. The petitioner claims to be a law student studying in Shikshan Parasrak Mandal's Law College, at Raibag. Certain disputes arose between the petitioner and one Babu Annappa @ Annu Gurav in respect of a mortgage deed executed in respect of agricultural lands belonging to the petitioner. Pursuant thereto, five criminal cases were filed against the petitioner for offences under Section 138 of Negotiable Instruments Act, 1881 on account of dishonour of cheques issued in pursuance of the said mortgage. As regards the said dishonor of cheques, Babu Annappa filed five criminal proceedings viz., C.C.Nos.531 to 535/2019 before II Additional Civil Judge and JMFC., Chikodi at Chikodi.
3. The petitioner was arrested in C.C.No.533/2019 in furtherance of non-bailable warrant issued by the II Additional Civil Judge and JMFC., Chikodi vide order dated 10.04.2019 by the Respondent No.3-Police Sub-Inspector, Ankali Police Station between 1.00



WP No. 115362 of 2019

p.m. to 1.30 p.m., in the Market Place at Ankali, when the petitioner is stated to have been returning from his College after writing his internal exams.

4. The petitioner claims that the petitioner was handcuffed and paraded with handcuffs in Ankali Town and later on was taken in a K.S.R.T.C Bus in handcuffs from Ankali Police Station to Chikodi Police Station, without producing the petitioner before the Court. The petitioner claims that the said incident has been video recorded and a compact disc in relation thereto has been produced by the petitioner. The petitioner moved a bail application in the said proceedings. However, the same was rejected and the petitioner was remanded to Judicial custody. Subsequently, the petitioner was convicted by the II Additional Civil Judge and JMFC., Chikodi in all five criminal cases, as regards which, appeals were filed by the petitioner in Criminal Appeal Nos.362 to 366/2019 challenging the said order of conviction,



WP No. 115362 of 2019

wherein the 7th Additional District and Sessions Court, Belagavi had stayed the order of conviction and sentence vide order dated 19.10.2019.

5. The petitioner claims that despite the stay, respondent No.3 officials were illegally arresting and detaining the petitioner, more particularly, on 05.11.2019, the petitioner is alleged to have been detained and taken to the Ankali Police Station stating that an execution warrant has been issued against the petitioner. But later on, he was released when the advocate of the petitioner approached the Ankali Police Station. The petitioner further claims that the petitioner was once again called by respondent No.3 officials to attend the Ankali Police Station on 08.11.2019 and further that the police attached to respondent No.3 have been visiting the house of the petitioner in civil dress and have threatened him. It is on the basis of the above, the petitioner claims that his family life has been ruined



WP No. 115362 of 2019

so also his reputation. The petitioner's fundamental rights have been violated by the respondents abusing their official position and it is in that background that the petitioner is before this court seeking for the aforesaid reliefs.

6. Sri.Santosh Pujari, learned counsel for the petitioner submitted that:

6.1. The respondent No.3 and police attached to the Ankali Police Station have been acting arbitrarily and illegally with ulterior motives;

6.2. That the offences being bailable and the petitioner's counsel having filed an exemption application, non-bailable warrant ought not to have been issued against the petitioner;

6.3. At the time of arrest of the petitioner, the petitioner ought not to have been handcuffed nor was he required to be paraded in Ankali



WP No. 115362 of 2019

Town and taken in KSRTC bus from Ankali Police Station to Chikodi Police Station;

6.4. The punishment for the offences of dishonor of cheques, even if convicted, is a maximum of two years. Thus, the petitioner ought not to have been handcuffed;

6.5. There is absolutely no reason for the petitioner to be paraded in Ankali Town which has caused serious harm and injury to the reputation of the petitioner;

6.6. That the manner in which the respondent No.3 and its officials have acted is nothing less than police raj.

6.7. That the concerned police have given a go-bye to the directions issued in numerous decisions of the Hon'ble Apex Court and this Court.

6.8. That the manner in which they have acted has affected the personal liberty of the petitioner.



WP No. 115362 of 2019

He refers to and relies upon the following decisions.

6.8.1.State of Maharashtra & Ors vs.

Ravikant S.Patil reported in (1991) 2

SCC 373 more particularly Paras 4 and 5

which read as under:-

4. Having gone through the entire record we are unable to disagree with some of the findings of the High Court regarding the handcuffing and we do not propose to interfere with the order directing the payment of compensation. But we think that Shri Prakash Chavan, Inspector of Police, appellant 2 herein, cannot be made personally liable. He has acted only as an official and even assuming that he has exceeded his limits and thus erred in taking the undertrial prisoner handcuffed, still we do not think that he can be made personally liable. In Rudul Sah v. State of Bihar [(1983) 4 SCC 141 : 1983 SCC (Cri) 798] , this Court directed the State to pay compensation to the person illegally detained. The High Court also having noted this decision observed that the court can order payment of compensation either by the State or persons acting on behalf of the State. Having so observed, the High Court, however, held Shri Prakash Chavan, Inspector of Police personally liable and directed him to pay the compensation. We are of the view that in the instant case also a similar order as one passed in Rudul Sah case [(1983) 4 SCC 141 : 1983 SCC (Cri) 798] , will meet the ends of justice. Then the High Court has also directed that an entry should be made in his service record to the effect that he was guilty of violation of fundamental right of an undertrial prisoner. So far this direction is concerned, it is submitted that such an adverse entry cannot straightway be made without giving the Inspector of Police, appellant 2 herein, an opportunity of



WP No. 115362 of 2019

being heard. We find considerable force in this submission and accordingly we modify the order of the High Court as follows.

5. The compensation of Rs 10,000 as awarded by the High Court, shall be paid by the State of Maharashtra. The concerned authorities may, if they think it necessary, hold an enquiry and then decide whether any further action has to be taken against Shri Prakash Chavan, Inspector of Police. Subject to the above directions, this appeal is disposed of.

6.8.2. In Re: M.P.Dwivedi & Ors (Suo Motu Contempt Petition) reported in (1996) 4 SCC 152 more particularly Paras 11, 18, 19 and 22 which read as under:

11. The justification for handcuffing that has been offered about the undertrial prisoners trying to escape from custody does not stand scrutiny because the accused were social activists who were agitating for the protection of the rights of the tribals and at the time of arguments on the bail application of the accused persons, bail was not opposed by the prosecution on the ground of seriousness of the charges against them or the likelihood of their absconding. It is not disputed that no orders were obtained from the Magistrate concerned with regard to handcuffing of the prisoners before taking them to court from jail and to the jail from the court. The handcuffing of the members of the Sangath who were undertrial prisoners, was, therefore, not justified and was in clear disregard of the law laid down by this Court in the decisions referred to above. The question that arises is whether the said actions of the contemnors in handcuffing the prisoners constitute contempt of this Court. We will first take up the case of the five police personnel who are Contemnors 1 to 5.



WP No. 115362 of 2019

18. *The handcuffing of the undertrial prisoners cannot, however, be justified even under the provisions of Regulation 465 of the M.P. Police Regulations inasmuch as the said regulation requires an express authorisation from the Magistrate/Jail Officer for the purpose of taking him to court from jail and from jail to court. Admittedly, no such authorisation was obtained in this case. As regards the role and responsibility of Contemners 1 to 5 in these actions involving handcuffing of undertrial prisoners, it may be stated that Contemners 3 to 5 were directly involved in the said incidents of handcuffing because the handcuffing was done under their directions or in their presence. Contemners 1 and 2, even though not directly involved in the said incidents since they were not present, must be held responsible for having not taken adequate steps to prevent such actions and even after the said actions came to their knowledge, they condoned the same by not taking stern action against persons found responsible for this illegality. We, therefore, record our disapproval of the conduct of all the five Contemners 1 to 5 in this regard and direct that a note regarding the disapproval of their conduct by this Court be placed in the personal files of all of them.*

19. *We are also constrained to say that though nearly 15 years have elapsed since this Court gave its decision in Prem Shankar Shukla [(1980) 3 SCC 526 : 1980 SCC (Cri) 815 : (1980) 3 SCR 855] no steps have been taken by the authorities concerned in the State of Madhya Pradesh to amend the M.P. Police Regulations so as to bring them in accord with the law laid down by this Court in that case. Nor has any circular been issued laying down the guidelines in the matter of handcuffing of prisoners in the light of the decision of this Court in Prem Shankar Shukla [(1980) 3 SCC 526 : 1980 SCC (Cri) 815 : (1980) 3 SCR 855]. The Chief Secretary to the Government of Madhya Pradesh is, therefore, directed to ensure that suitable steps are taken to amend the M.P. Police Regulations in the light of the law laid down by this Court in Prem Shankar Shukla [(1980) 3 SCC 526 : 1980 SCC (Cri) 815 : (1980) 3 SCR 855] and proper guidelines are issued for the guidance of the police personnel in this regard. The Law Department and the Police Department of the Government of*



WP No. 115362 of 2019

Madhya Pradesh shall take steps to ensure that the law laid down by this Court in the matter of protection of human rights of citizens as against actions by the police is brought to the notice of all Superintendents of Police in the Districts soon after the decision is given, by issuing necessary circulars in that regard and the responsibility is placed on the Superintendent of Police to ensure compliance with the said circulars by the subordinate police personnel under his charge.

22. *We have carefully considered the two affidavits of the contemner as well as the affidavits of Shri Betulla Khan and Shri Girdhari Lal Vani, Advocates. We would assume that on 8-2-1993 the contemner did not make the statement about the judgments of this Court having no application there and the police having the right to transport the accused as they want, with or without handcuffs. But the contemner, being a judicial officer, is expected to be aware of law laid down by this Court in Prem Shankar Shukla v. Delhi Admn. [(1980) 3 SCC 526 : 1980 SCC (Cri) 815 : (1980) 3 SCR 855] and Sunil Gupta v. State of M.P. [(1990) 3 SCC 119 : 1990 SCC (Cri) 440] Prem Shankar Shukla v. Delhi Admn. [(1980) 3 SCC 526 : 1980 SCC (Cri) 815 : (1980) 3 SCR 855] was decided in 1980, nearly 13 years earlier. In his affidavits also he does not say that he was not aware of the said decisions. Apart from that, there were provisions in Regulation 465 of the M.P. Police Regulations prescribing the conditions in which undertrial prisoners could be handcuffed and they contain the requirement regarding authorisation for the same by the Magistrate. It appears that the contemner was completely insensitive about the serious violations of the human rights of the undertrial prisoners in the matter of their handcuffing inasmuch as when the prisoners were produced before him in court in handcuffs, he did not think it necessary to take any action for the removal of handcuffs or against the escort party for bringing them to the court in handcuffs and taking them away in handcuffs without his authorisation. This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated. Keeping in view that the contemner is a young judicial officer, we refrain from imposing punishment on him. We, however,*



WP No. 115362 of 2019

record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner. We also feel that judicial officers should be made aware from time to time of the law laid down by this Court and the High Court, more especially in connection with protection of basic human rights of the people and, for that purpose, short refresher courses may be conducted at regular intervals so that judicial officers are made aware about the developments in the law in the field.

6.8.3. Rini Johar & Another vs. State of Madhya Pradesh & Ors reported in (2016) 11 SCC 703 more particularly Paras 16 and 27 which read as under:

16. *In Joginder Kumar v. State of U.P. [Joginder Kumar v. State of U.P., (1994) 4 SCC 260 : 1994 SCC (Cri) 1172] while considering the misuse of police power of arrest, it has been opined: (SCC p. 267, para 20)*

"20. ... No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. ... no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter."

27. *In the case at hand, there has been violation of Article 21 and the petitioners were compelled to face humiliation. They have been treated with an attitude of insensibility. Not only there are violation of guidelines issued in D.K. Basu [D.K. Basu v. State of W.B., (1997) 1 SCC 416 : 1997 SCC (Cri) 92], there are also flagrant violation of mandate of law enshrined under Section 41 and Section 41-A Cr.PC. The investigating officers in no*



WP No. 115362 of 2019

circumstances can flout the law with brazen proclivity. In such a situation, the public law remedy which has been postulated in Nilabati Behera [Nilabati Behera v. State of Orissa, (1993) 2 SCC 746 : 1993 SCC (Cri) 527] , Sube Singh v. State of Haryana [Sube Singh v. State of Haryana, (2006) 3 SCC 178 : (2006) 2 SCC (Cri) 54] , Hardeep Singh v. State of M.P. [Hardeep Singh v. State of M.P., (2012) 1 SCC 748 : (2012) 1 SCC (Cri) 684] , comes into play. The constitutional courts taking note of suffering and humiliation are entitled to grant compensation. That has been regarded as a redeeming feature. In the case at hand, taking into consideration the totality of facts and circumstances, we think it appropriate to grant a sum of Rs 5,00,000 (Rupees five lakhs only) towards compensation to each of the petitioners to be paid by the State of M.P. within three months hence. It will be open to the State to proceed against the erring officials, if so advised.

6.8.4. Anita Thakur & Ors vs. Government J & K and Ors. Reported in (2016) 15 SCC 525, more particularly Paras 13, 18 and 19 which read as under:

13. *It is perceivable that the State in its initial affidavit had stated that the Director General of Police by its order dated 8-7-2015 had appointed Inspector General of Police, CID to enquire into the allegations as regards the violation of the provisions enshrined under Sections 41-A to 41-C CrPC. It needs to be stated here that in pursuance of the order passed by the Director General, an enquiry has been conducted by the Inspector General of Police Administration, CID, Bhopal. It has been styled as "preliminary enquiry". The said report dated 19-8-2015 has been brought on record. The inquiring authority has recorded the statement of Ms Ishrat Praveen Khan. The part of her statement reads as follows:*



WP No. 115362 of 2019

"... When I received the order, I requested DSP Shri Deepak Thakur that I was not in the District Police Force. I do not have any knowledge about IPC/CrPC/Police Regulation/Police Act and Evidence Act, IT Act as I have not obtained any training in Police Training School, nor do I have any knowledge in this regard, nor do I have any knowledge to fill up the seizure memo and arrest memo. Even after the request, DSP Shri Deepak Thakur asked in strict word that I must follow the order. The duty certificate was granted to me on 26-11-2012, on which Report No. 567 time 16.30 was registered, in which there are clear directions. In compliance with this order, we reached Kondwa Police Station in Pune, Maharashtra on 27-11-2012 with my team and 2 constables and 1 woman constable were sent to assist us from there. The persons of Police Station Kondwa came to know reaching Lulla Nagar that the said area does not fall under their police station area so the police of Kondwa phoning Banwari Police Station got to bring the force for help Banwari Police Station. I had given the written application in PS Banwari. The entire team reached the house of Rini Johar and 1 laptop of Dell company and 1 data card of Reliance company were seized. Rini Johar called her mother Gulshan Johar from the Court furnishing information to her about her custody. Thereafter, Shri Rini Johar had called up the Inspector General of Police, State Cyber Police Shri Anil Kumar Gupta. I and my team had taken Miss Rini Johar and Smt Gulshan in our custody. I and Constable Miss Hemlata Jharbare conducted robe search of Miss Rini Johar and Smt Gulshan Johar. Nothing was found on their body."

18. In *D.K. Basu v. State of W.B.* [*D.K. Basu v. State of W.B.*, (1997) 1 SCC 416 : 1997 SCC (Cri) 92] , after referring to the authorities in *Joginder Kumar* [*Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260 : 1994 SCC (Cri) 1172] , *Nilabati Behera v. State of Orissa* [*Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746 : 1993 SCC (Cri) 527] and *State of M.P. v. Shyamsunder Trivedi* [*State of M.P. v. Shyamsunder Trivedi*, (1995) 4 SCC 262 : 1995 SCC (Cri) 715] the Court laid down certain guidelines to be followed in cases of arrest and detention till legal provisions are made in that behalf as preventive measures. The said guidelines read as follows: (*D.K. Basu case* [*D.K. Basu v.*



WP No. 115362 of 2019

State of W.B., (1997) 1 SCC 416 : 1997 SCC (Cri) 92] , SCC pp. 435-36, para 35)

"(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of



WP No. 115362 of 2019

the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous noticeboard."

19. *Mr. Fernandes, learned Amicus Curiae, in a tabular chart has pointed that none of the requirements had been complied with. Various reasons have been ascribed for the same. On a scrutiny of the enquiry report and the factual assertions made, it is limpid that some of the guidelines have been violated. It is strenuously urged by Mr Fernandes that Section 66-A(b) of the Information Technology Act, 2000 provides maximum sentence of three years and Section 420 CrPC stipulates sentence of seven years and, therefore, it was absolutely imperative on the part of the arresting authority to comply with the*



WP No. 115362 of 2019

procedure postulated in Section 41-A of the Code of Criminal Procedure. The Court in Arnesh Kumar v. State of Bihar [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] , while dwelling upon the concept of arrest, was compelled to observe thus: (SCC p. 277, para 5)

"5. Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it seems that the police has not learnt its lesson: the lesson implicit and embodied in CrPC. It has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasised time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive."

6.8.5. Mehmood Nayyar Azam vs. State of Chhattisgarh & Ors reported in (2012) 8 SCC 1, more particularly Paras 42, 44, 45, 46, 47 and 48 which read as under:

42. *Presently, we shall advert to the aspect of grant of compensation. The learned counsel for the State, as has been indicated earlier, has submitted with immense vehemence that the appellant should sue for defamation. Our analysis would clearly show that the appellant was tortured while he was in custody. When there is contravention of human rights, the inherent concern as envisaged in Article*



WP No. 115362 of 2019

21 springs to life and enables the citizen to seek relief by taking recourse to public law remedy.

44. *Dr A.S. Anand, J. (as His Lordship then was), in his concurring opinion, expressed that: (Nilabati case [(1993) 2 SCC 746 : 1993 SCC (Cri) 527] , SCC pp. 768-69, para 34)*

"34. ... The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by the Supreme Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting 'compensation' in proceedings under Articles 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law."

45. *In Sube Singh v. State of Haryana [(2006) 3 SCC 178 : (2006) 2 SCC (Cri) 54 : AIR 2006 SC 1117] a three-Judge Bench of the Apex Court, after referring to its earlier decisions, has opined as follows: (SCC pp. 198-99, para 38)*



WP No. 115362 of 2019

"38. It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of the Code of Criminal Procedure."

46. At this stage, we may fruitfully refer to the decision in *Hardeep Singh v. State of M.P.* [(2012) 1 SCC 748 : (2012) 1 SCC (Cri) 684] The appellant therein was engaged in running a coaching centre where students were given tuition to prepare for entrance test for different professional courses. On certain allegation, he was arrested and taken to police station where he was handcuffed by the police without there being any valid reason. A number of daily newspapers published the appellant's photographs and on seeing his photograph in handcuffs, the appellant's elder sister was so shocked that she expired. After a long and delayed trial, the appellant, Hardeep Singh, filed a writ petition before the High Court of Madhya Pradesh at Jabalpur that the prosecution purposefully caused delay in conclusion of the trial causing harm to his dignity and reputation. The learned Single Judge, who dealt with the matter, did not find any ground to grant compensation. On an appeal being preferred, the Division Bench observed that an expeditious trial ending in acquittal could have restored the appellant's personal dignity but the State instead of taking prompt steps to examine the prosecution witnesses delayed the trial for five long years. The Division Bench further held that there was no warrant for putting the handcuffs on the appellant which adversely affected his dignity. Be it noted, the Division Bench granted compensation of Rs 70,000.

47. This Court, while dealing with the facet of compensation, held thus: (*Hardeep Singh case* [(2012) 1 SCC 748 : (2012) 1 SCC (Cri) 684] , SCC pp. 752-53, para 17)



WP No. 115362 of 2019

"17. Coming, however, to the issue of compensation, we find that in the light of the findings arrived at by the Division Bench, the compensation of Rs 70,000 was too small and did not do justice to the sufferings and humiliation undergone by the appellant. In the facts and circumstances of the case, we feel that a sum of Rs 2,00,000 (Rupees two lakhs) would be an adequate compensation for the appellant and would meet the ends of justice. We, accordingly, direct the State of Madhya Pradesh to pay to the appellant the sum of Rs 2,00,000 (Rupees two lakhs) as compensation. In case the sum of Rs 70,000 as awarded by the High Court, has already been paid to the appellant, the State would naturally pay only the balance amount of Rs 1,30,000 (Rupees one lakh thirty thousand)."

Thus, suffering and humiliation were highlighted and the amount of compensation was enhanced.

43 [Ed.: Para 48 corrected vide Official Corrigendum No. F.3/Ed.B.J./47/2012 dated 13-8-2012.] . On a reflection of the facts of the case, it is luculent that the appellant had undergone mental torture at the hands of insensible police officials. He might have agitated to ameliorate the cause of the poor and the downtrodden, but, the social humiliation that has been meted out to him is quite capable of destroying the heart of his philosophy. It has been said that philosophy has the power to sustain a man's courage. But courage is based on self-respect and when self-respect is dented, it is difficult even for a very strong-minded person to maintain that courage. The initial invincible mind paves the path of corrosion. As is perceptible, the mindset of the protectors of law appears to cause torment and insult and tyrannise the man who is helpless in custody. There can be no trace of doubt that he is bound to develop stress disorder and anxiety which destroy the brightness and strength of the will power. It has been said that anxiety and stress are slow poisons. When torment is added, it creates commotion in the mind and the slow poisons get activated. The inhuman treatment can be well visualised when the appellant came out from custody and witnessed his photograph being circulated with the self-condemning words written



WP No. 115362 of 2019

on it. This withers away the very essence of life as enshrined under Article 21 of the Constitution. Regard being had to the various aspects which we have analysed and taking note of the totality of facts and circumstances, we are disposed to think that a sum of Rs 5 lakhs (Rupees five lakhs only) should be granted towards compensation to the appellant and, accordingly, we so direct. The said amount shall be paid by the respondent State within a period of six weeks and be realised from the erring officers in equal proportions from their salary as thought appropriate by the competent authority of the State.

6.8.6. Jaswinder Singh and Others vs. State of Karnataka reported in (2002) ILR (KAR) 2213, more particularly Pars 14, 15, 16 and 18 which read as under:-

14. *The close reading of the ratio laid down by the Supreme Court in several cases indicate the following inviolable guidelines:*

(1) Handcuffing of the undertrial prisoner is not a rule but an exception.

(2) The accused in the custody of the escort staff who is under judicial custody is deemed to be under such custody and authorisation of the Court and therefore, transit of the prisoners from Jail to Court and back should necessarily be by the order of the Magistrate or Sessions Court. Without such orders handcuffing by the escort officials is impermissible.

(3) Handcuffing of the prisoner in transit to jail to Court and back should be dependent upon justifiable reasons like his antecedents, his violent behavior likelihood of attempt of escape or rescue.

15. *Mere fact that the alleged offence is heinous in nature shall not warrant justification of handcuffing.*



WP No. 115362 of 2019

16. As laid down by the Hon'ble Supreme Court, violent, disorderly behavior and antecedents of the prisoner are the relevant factors, apart from the post arrest incidents of violent and disorderly behaviour; the antecedents, the violent conduct, behavior or scheming actions of the accused while committing the offence and the motive for the crime, shall also be a requisite considerations for justification or otherwise for handcuffing, which the Magistrate or Sessions Court may take into consideration while passing the orders on handcuffing of the Undertrial Prisoners.

18. After due consideration of the ratio as culled out above from the various decisions of the Apex Court, coming to the case on hand, the conduct of the escort staff in handcuffing the accused during their transit from prison to Court and back cannot be said to be without a judicial order. May be during the committal stage before a Magistrate, no such orders is passed. But however, the Sessions Court by its earlier order dated 7.11.2000 permitted handcuffing of the accused for a limited extent and for limited period during the transit. On the second application of the accused the Sessions Court rejected their request by order dated 28.1.2002 on the ground that there has been already an earlier order on this issue and that there are no changed circumstances to review or reconsider the request. The present grievance petition is not in the nature of revision or criminal petition invoking inherent jurisdiction. Nevertheless, keeping in view the ends of justice, this broader issue was also taken up for consideration while hearing the petition and after carefully going through the earlier order of the Sessions Court, where in detail the Court has passed a considered order on 7.11.2000. Almost an year thereafter request is-sought to be made in the course of the argument for a direction against the prosecution not to handcuff the accused during their transit from prison to Court and back. Since there is already a concluded order and at a belated stage, the request made does not appear to be a tenable, besides, by giving stringent direction, substantial progress has been made in recording of the evidence and presently directions are issued for conclusion of the trial by the end of March 2002.



WP No. 115362 of 2019

6.9. On the basis of the above, he submits that there is no order permitting handcuffing of the petitioner. Therefore, handcuffing of the petitioner and parading him is violative of Article 21 of the Constitution of India as also violative of the principles and directions issued in the aforesaid decisions and as such, the petitioner is required to be compensated as against illegal acts of the respondents by awarding compensation of Rs.25 lakhs.

7. Despite several opportunities having been granted to the respondents to file their Statement of Objections, no objections have been filed by the respondents. Sri.Praveen Upkar, learned HCGP would however submit that:

7.1. The petitioner had not appeared before the II Additional Civil Judge and JMFC., Chikodi due to which the said Court had issued non-bailable warrant. The petitioner had abused the process



WP No. 115362 of 2019

of the Court and not even appeared before the said Court.

7.2. The petitioner claiming to be a law student was violating the applicable law even though the criminal proceedings were pending against him and it is for this reason that the petitioner was arrested in furtherance of the execution of a non-bailable warrant and since the petitioner was to be taken from Ankali to Chikodi he was handcuffed, more so since the mode of travel was through public transport.

7.3. He further submits that the petitioner was not paraded in Ankali town, he was taken from the place of his arrest to the bus stand from where the petitioner was transported to Chikodi Police Station. The mere walking from the place of arrest to the bus stand cannot be said to be parading of the petitioner and in that background, he submits that the decisions



WP No. 115362 of 2019

relied upon by the petitioner are not applicable to the present case.

7.4. The police have acted in a proper and required manner and therefore, the above Writ Petition is required to be dismissed.

8. On the basis of the above submissions, the points that would arise for consideration/determination are:

- 1. Whether the accused who is arrested can be handcuffed? If so, under what circumstances?**
- 2. If there is any violation by the Arresting Officer, would accused be eligible for compensation?**
- 3. On what basis, is the compensation required to be determined and paid?**
- 4. What Order?**

9. I answer the above questions as under: -

10. **Answer to Point No.1: Whether the accused who is arrested can be handcuffed? If so, under what circumstances?**

10.1. Section 46 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') deals with the



WP No. 115362 of 2019

manner of making an arrest and the same reads as under:-

46. Arrest how made. (1) *In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.*

[Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, here submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest].

(2) *If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.*

(3) *Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.*

[(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made].

10.2. A perusal of the above provision would indicate that a person can be arrested by touching or confining the body of the person to be arrested, unless, there is a submission to the custody by



WP No. 115362 of 2019

word or action. It is only when there is a resistance to the arrest or evasion of arrest that the Police Officer may use all means necessary to effect the arrest.

10.3. Section 49 of Cr.P.C. reads as under:-

*49. **No unnecessary restraint.** The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.*

10.4. A reading of the above provision would indicate that a person arrested shall not be subjected to more restraint than is necessary to prevent his escape. Therefore, it is the requirement of law that the restraint has to be reasonable and only to the extent that the person does not escape from custody.

10.5. Section 220 of the Indian Penal Code (for short, 'IPC') reads as under:-

220. Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.—Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in



WP No. 115362 of 2019

confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

10.6. A reading of the above provision would indicate that if a person who has legal authority to confine a person, confines such a person contrary to law, he shall be punishable with imprisonment, which may extend to seven years or with fine or with both.

10.7. Sections 831, 832, 833, 834 and 835 of the Karnataka Police Manual reads as under:-

831: *The use of handcuffs not only causes humiliation to the prisoner but also destroys his self-respect and is contrary to the modern notions in the treatment of offenders. Prisoners should not normally be handcuffed, unless he is violent or disorderly or circumstances necessitate such handcuffing. No person arrested by a police Officer or remanded to custody by a Magistrate on a charge of having committed a bailable offence, shall be handcuffed unless for some special reasons it is believed that he is likely to escape. The following instructions are issued in this behalf:—*

(1) *A prisoner should not normally be handcuffed unless he is violent or disorderly, or circumstances necessitate such handcuffing.*



WP No. 115362 of 2019

- (2) *Fetters should not be imposed on any prisoners admitted in a hospital except with the approval of the Medical Officer and in no case prisoners who are aged and bed-ridden in hospital should be handcuffed or fettered.*
- (3) *In no case handcuffs or getters should be imposed on women prisoners, juvenile prisoners or civil prisoners.*
- (4) *No person arrested by a Police Officer or remanded to custody by a Magistrate, on a charge of having committed a bailable offence shall be handcuffed unless for some special reasons it is believed that he is likely to escape.*
- (5) *When an accused is in Court during the trial he must be held to be in the custody of the Court. If the accused is so dangerous that it is necessary to handcuff him, a representation should be made to the Court and the Court will issue proper instructions in the matter. Accused persons while in Courts during trial should not be handcuffed except with the permission of Court.*
- 6) *Under trial prisoners while being escorted to and from Courts, shall not be handcuffed and chained unless there is a reasonable expectation either from the heinous nature of the crimes with which they are charged or for their character or behavior that such persons will use violence or will attempt to escape or that an attempt will be made to rescue them. The same principle will be applied to convicts proceeding in public places in police custody. The decision as to whether handcuffs and chains should be used or not will ordinarily lie with the Station House Officer or in his absence, with the officer next below him in seniority. As far as possible, the police escort shall in each case be sufficiently strong to prevent such persons from escaping or giving undue trouble.*
- (7) *Whenever accused, but convicted persons are handcuffed, the facts and the reasons for it shall be stated in the Station House Diary.*
- (8) *Whenever it is considered necessary to handcuff accused, but unconvicted prisoners confined in a sub-jail when taken out in the precincts of the sub jail for food or exercise, the order of the Superintendent of*



WP No. 115362 of 2019

the sub-jail should be obtained in the prescribed register kept for the purpose by the Officer-in-charge of every sub-jail guard.

- (9) *In regard to refractory, violent or dangerous prisoners, the Officer-in-charge of the sub-jail guard or the senior Police Officer present may impose handcuffs in cases where the orders of the Superintendent of the sub-jail cannot be obtained in time to avoid risk, provided the facts shall be reported to the Superintendent at once.*

Method of using Handcuffs and Chains

832: *In securing a prisoner under escort, the primary issue is that the policeman in charge should be alert. He there be negligence in this respect, no amount or method of tying or handcuffing will prevent a prisoners escape.*

833: *If it be necessary to use handcuffs, the key-holes of the handcuffs should be kept uppermost, as in this position it is not easy to penthem by striking on some hard substance. Care should also be taken that the handcuffs are not too large; otherwise, prisoner can slip his hand through them.*

834: *When there is only one prisoner, there is the simple device of attaching the handcuffs to the prisoner's right hand and to a Constable's left. Both the prisoner and the Constable can walk in comfort but the prisoner cannot escape.*

835: *It is sometimes advisable to handcuff a prisoner with his arms behind his back. The prisoner can walk quite comfortably but cannot run fast; and at the same time, he cannot strike the handcuffs on some hard substance to break them open. When travelling by train, a prisoner who is handcuffed behind cannot easily escape as he finds it difficult to fall out and then pick himself up again.*

10.8. The said provisions provide for instructions for using handcuffs. A perusal of the said provisions would indicate that the prisoner



WP No. 115362 of 2019

should not be normally handcuffed, unless he is violent or disorderly or circumstances necessitate such handcuffing. In the event of an accused is handcuffed, the facts and reasons for it is required to be recorded in the Station House Dairy.

10.9. The Hon'ble Apex Court in ***PREM SHANKAR SHUKLA VS. DELHI ADMINISTRATION reported in (1980) 3 SCC 526*** made it is constitutional mandate that no prisoner shall be handcuffed or fettered routinely or merely for the convenience of the custodian or escort. This was declared to be law by eminent libertarian, Justice V.R.Krishna Iyer in the said judgment. The Hon'ble Apex Court went on to hold that the only circumstance which validates incapacitation by irons is for preventing the escape of the arrestee or the convict. Where an arrestee or a convict can be prevented from



WP No. 115362 of 2019

escape by increasing the security, the Hon'ble Apex Court held that such an increase is to be a norm rather than handcuffing. Even the offence for which the arrestee has been charged would not be a ground for handcuffing the arrestee, however grave the offence may be, if the arrestee were not looking at escape and/or were not given to violent behavior putting the life and liberty of others at risk, such a person could not be handcuffed. The Hon'ble Apex Court mandated that if an arrestee were required to be handcuffed, the reasons for such handcuffing has to be recorded in writing and when the arrestee was produced before the Court, the Hon'ble Apex Court made it a duty of the Court to enquire with the said arrestee as to whether he had been handcuffed or not. If handcuffed, the Court shall go through the reasons recorded and thereafter



WP No. 115362 of 2019

approve the reasons or reject the same. If the Court were to reject the same, the Court would have to put on notice the Arresting Officer and others that arrestee should not henceforth be handcuffed.

10.10. With the advent of virtual conferencing and with the advent of video conferencing equipment being installed at the jail as also in the Court Hall, the travel of under trial prisoners has now been restricted and as such, under trial prisoners could be produced by using modern technology of virtual conferencing which does away with handcuffing or restraints on the under trial prisoners.

10.11. This would however not apply to the arrest of a person and/or the first production of the accused before the committal Court. Since the law mandates that when an arrestee is produced for the very first time, it has to be so



WP No. 115362 of 2019

done physically. As regards this aspect, Legislators or the Law Commission would have to consider in what manner an accused is to be produced before the Court for the first time and what are the safeguards which are required to be taken into consideration and imposed at that point of time.

10.12. In the present case, we are concerned with the arrest of a person and handcuffing of a person at that particular point of time. Even though the facts in **Prem Shankar Shukla's** case are different from the present case in as much as that case dealt with a convict being transported from Jail to the Court and being produced before the Court, the principles as stated therein by the Hon'ble Apex Court would apply to the present case. Similar is the situation as regards the decision of the Hon'ble Apex Court in the case of **STATE OF MAHARASHTRA VS.**



WP No. 115362 of 2019

RAVIKANT S.PATIL [(1991) 2 SCC 373] and **M.P.DWIVEDI & ORS** where under trial prisoners were being produced before the Court.

10.13. **MEHMOOD NAYYAR AZAM VS. STATE OF CHHATTISGARH & ORS [(2012) 8 SCC 1]** is a case where an arrestee had been remanded to the judicial custody, but instead of taking the under trial prisoner to the jail, he was taken to the police station where he was harassed and ill-treated and photographs with placards were taken and circulated among the general public. Hence, that was a case which related to the humiliation of the undertrial prisoner while in judicial/police custody.

10.14. **ANITA THAKUR & ORS VS. GOVERNMENT OF J & K AND ORS. [(2016) 11 SCC 703]** deals with a case where the police had manhandled the petitioners in a brutal and



WP No. 115362 of 2019

barbaric manner. However, they were not arrested nor handcuffed.

10.15. ***RANI JOHAR & ANOTHER VS. STATE OF MADHYA PRADESH & ORS [(2016) 11 SCC 703]*** is a case relating to illegal arrest and late production of the arrestee before the Court after 17 days as also related to undignified treatment and humiliation faced by the arrestee during the said period.

10.16. A perusal of the above decisions indicates that none of the cases relied upon by Sri.Santosh Pujari, learned counsel for the petitioner are relating to the handcuffing of an accused. Few of them are relating to under trial prisoners and the others are relating to the humiliation by the Police Officer after arrest and/or while in jail. Thus, none of the said decisions would *ex facie* apply to the present case.



WP No. 115362 of 2019

10.17. The Hon'ble Bombay High Court in **ANTONIO SEBASTIAO MERVYN DEGBERTDE PIEDADE PACHECO VS. STATE OF GOA & ORS** reported in 2008(6) AIR BOM R 585 case has observed that the arrestee was handcuffed while effecting the recovery of pickaxe. Though the same was refuted by the Police Officer, the Bombay High Court came to a conclusion that merely because the allegation is of theft of a pickaxe, it was not necessary to arrest him, particularly when the accused had himself reported in the Police Station. The Bombay High Court cautioned the police officers through the State Government that such an arrest should not be made at the drop of the hat. The Hon'ble Bombay High Court taking into consideration that there was an admission on the part of the Police Officer about the handcuffing of the arrestee being of the opinion



WP No. 115362 of 2019

that such handcuffing was not required and directed the State Government to make payment of compensation of Rs.10,000/-.

10.18. The Hon'ble Bombay High Court in ***SHRI KISAN VS. THE STATE OF MAHARASHTRA & ORS in Criminal Writ Petition No.4435/2012*** considered the case where the petitioner had been arrested and paraded in public while being handcuffed. In that case, the petitioner while being taken from the Police Station to the Public Health Centre was handcuffed with a rope attached to the police vehicle and was made to walk down the distance from the police station to the Public Health Centre. The petitioner therein contended that the conduct of the police was inhumane, cruel and degrading and thus, absolutely there is no justification for handcuffing and parading him as there was



WP No. 115362 of 2019

never any threat of escaping from the custody. The Hon'ble Bombay High Court taking into consideration that there is no dispute as regards the handcuffing and/or the petitioner being tied to the rope has only considered the aspect of whether the same was justified or not. In the affidavit filed by the concerned officer, it was stated that handcuffing was done so as to prevent the arrestee from escaping the police custody since he has started abusing the police present at the police station. Hence, Respondent No.2/police apprehending that the petitioner might turn violent and escape from the police custody or might cause injury to himself and as such, the handcuffs were used while taking him to the Public Health Centre and these facts have been recorded in the arrest memo. The Arresting Officer had however stated that there was no parade as



WP No. 115362 of 2019

such but the arrestee was walked from the police station to the Public Health Centre. The Bombay High Court was of the opinion that the said justification did not answer the parameters of law, since the handcuffing has to be done in extreme circumstances and/or in exceptional cases, for which, there has to be tangible evidence, documentary or otherwise establishing the possibility of an escape which would constitute a valid ground for handcuffing. The Bombay High Court relied upon **Prem Shankar Shukla's** case supra, which related to an undertrial prisoner being handcuffed for production in a court from the police station. The Bombay High Court referred to and relied upon Paragraph 44 of the judgment of the Hon'ble Apex Court in D.K.Basu's case, which reads as under:-

44. *The claim in public law for compensation for unconstitutional deprivation of fundamental right to*



WP No. 115362 of 2019

life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

10.19. By relying on the same, the Hon'ble Bombay High Court was of the opinion that there was a strict liability principle which had to be applied for the unnecessary handcuffing of the petitioner and awarded a sum of Rs.1,00,000/- as compensation.

10.20. From the decisions, which have been referred to by the counsels, it is seen that whether the under-trial prisoners or an accused being



WP No. 115362 of 2019

arrested, handcuffing should be by way of last resort and such handcuffing should mainly be only for the reason of whether there is a possibility of the accused and/or under trial prisoner escaping custody, causing harm to himself or causing harm to others. The nature of offences and the punishment prescribed for the said offence are not relevant for the matter of handcuffing.

10.21. Whenever a person is to be handcuffed, then it shall be the duty of the Arresting Officer to record the reasons for such handcuffing in the case diary which reasons ought to substantiate the possibility of escape which needs to be corroborated with suitable evidence, documentary or otherwise of the possibility of such escape and/or the possibility of causing harm to himself or others. It is only if these three conditions are fulfilled that an accused



WP No. 115362 of 2019

can be arrested. Though of course there may be certain other situations where handcuffing could be justified whether the same is justified or not would be determined by the Judge before whom the said person is produced. As held by the Apex Court in ***Prem Shankar Shukla***'s case, there is a duty which is imposed upon the said Court to make an enquiry from the arrestee as to whether he had been handcuffed and if the answer of the arrestee is in the affirmative, to ascertain from the case dairy the reasons for such handcuffing. If there are no such reasons mentioned in the case dairy to take action against the concerned police officer and if there are reasons mentioned to ascertain the veracity of the said reasons to justify the requirement of handcuffing of the said arrestee. If the reasons given are justifiable then, no action needs to be



WP No. 115362 of 2019

taken but if the reasons given are not justified, then suitable action needs to be taken against the police officers.

10.22. Hence, I answer Point No.1 by holding that an accused who is arrested can normally not be handcuffed. It is only under extreme circumstances that handcuffing of an accused can be resorted to. When such handcuffing is made, the Arresting Officer is required to record the reasons for handcuffing, which would have to sustain the scrutiny of the Court. Whenever an accused is produced before the Court of law, it would be required of the Court to enquire if the accused had been handcuffed or not and if handcuffed, to ascertain the reasons recorded by the Arresting Officer on the justifiability on the same. The reason of lack of personnel to



WP No. 115362 of 2019

secure the accused has already been negated by the Hon'ble Apex Court. If there are such lack of personnel as submitted by the learned HCGP, it would but be required for the State to fill up all the vacant posts and even if that were not to be sufficient, to recruit more persons so that the duty involved above is discharged in a proper and effective manner without violating the rights of the person arrested.

11. **Answer to point No.2: If there is any violation by the Arresting Officer, would accused be eligible for compensation?**

11.1. The decisions relating to compensation for police excess have been referred to hereinabove. Though they may not relate to handcuffing of an accused at the time of his arrest but the principles would nevertheless equally apply. In **D.K.Basu's** case at Paragraph 44, the Hon'ble Apex Court has



WP No. 115362 of 2019

succinctly laid down the principles of law, which has been reproduced hereinabove.

11.2. The aspect of liberty of a person whether he be an accused/a convict or otherwise is of paramount importance. Right to life and liberty is a fundamental right under Article 21 of the Constitution of India, which reads as under:-

21. Protection of life and personal liberty: *No person shall be deprived of his life or personal liberty except according to procedure established by law.*

11.3. In the event of any law restricting the right to liberty, the same would have to stand the test of the Constitution. Section 46 of the Cr.P.C. has afore detailed deals with how arrests have to be made and Section 49 of Cr.P.C deals with no unnecessary restraint of a person more than what is required to prevent his escape. The relevant provisions of the Karnataka Police Manual in this regard have also been referred to hereinabove.



WP No. 115362 of 2019

11.4. The Hon'ble Apex Court in the case of ***NILABATI BEHERA (SMT.) ALIAS LALITA BEHERA VS. STATE OF ORISSA AND OTHERS REPORTED IN (1993) 2 SCC 746*** has also dealt with the aspect of public law relating to public functionaries when the public functionaries were to violate any fundamental right, more so the right of personal liberty under Article 21 of the Constitution of India. The Apex Court after going through most of the decisions on the said point, came to a conclusion that a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights and that such a claim would be based on strict liability made by resorting to a constitutional remedy, provided for the enforcement of a fundamental right. The relevant paragraph



WP No. 115362 of 2019

being para 17 is reproduced hereunder for easy reference:

17. *It follows that 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.*

11.5. The Hon'ble Apex Court went on to further hold at Para 20 as under:-

20. *We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this*



WP No. 115362 of 2019

Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.

11.6. The majority judgment was delivered by Justice J.S.Verma (as he then was) and the concurring judgment was rendered by Justice Justice A.S.Anand (as he then was), in the concurring judgment at Paras 34 and 35 it is held as under:-

34. *The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and*



WP No. 115362 of 2019

preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law — through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with *Rudul Sah v. State of Bihar* [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the



WP No. 115362 of 2019

courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self-restraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law. Some of those situations have been identified by this Court in the cases referred to by Brother Verma, J.

11.7. In view of the above, I am of the considered opinion that the respondent-State would have to make payment of compensation to try and make good the loss caused to the petitioner.

11.8. The measure of damage would have to be on the basis of any evidence and documents produced by the petitioner. Hence, I answer Point No.2 by holding that if there is a violation by the Arresting officer in putting handcuffs on



WP No. 115362 of 2019

the petitioner, the petitioner would be eligible for compensation.

12. **Answer to Point No.3: On what basis, is the compensation required to be determined and paid?**

12.1. Compensation which is required to be paid as aforesaid being a Public Law Remedy, there cannot be a straitjacket formula which could determine the amount of compensation that has to be paid. Be that as it may. The compensation which is required to be paid is by applying the principles of strict liability. While awarding compensation, the Court would have to take into consideration the loss/damage that might have been caused to the person who has been handcuffed to recompensate him/her for such damage. Apart there from, the Court would also have to consider the imposition of compensation as a deterrent to the Police Officers who do not discharge their duties in a



WP No. 115362 of 2019

proper manner and/or violate the applicable law. The imposition of compensation should also be such that the concerned Police Officers should follow the applicable law in both letter and spirit and are put on notice that non-following of the applicable law could result in they being liable to make payment of monetary compensation to the arrestee. Though the State could be required to make payment of compensation, the compensation being paid on account of an officer of the State like a Police Officer not following the applicable law, the State would be at liberty to recover the same from the concerned defaulter/defaulters.

13. **Answer to Point No.4**: What Order:

13.1. It is in the above background that this Court would have to ascertain if the petitioner has been handcuffed and if handcuffed, whether the



WP No. 115362 of 2019

same has been justified or not. As observed above, there is no objections filed by the State nor any affidavit filed by the Arresting Officer as regards the allegations made by the petitioner. Thus, there is no defence as such which has been put forth by the respondents in the present matter.

13.2. The petitioner has produced a compact disc stated to be a recording of the arrest, handcuffing and the parading of the petitioner.

13.3. A perusal of the said compact disc indicates that the petitioner and one police officer are standing and waiting for the bus at the bus stop. During the said time, the petitioner has been permitted to speak on his mobile phone and another person probably a friend or relative of the petitioner has videographed the same and also provided water to the petitioner. The



WP No. 115362 of 2019

petitioner is seen with the handcuff on his left hand which he had put in his left trouser pocket. The said video does not in any manner establish the parading of the petitioner and/or the petitioner being handcuffed in the public presence so as to cause any injury as such to the reputation of the petitioner.

13.4. The video also depicts that the petitioner as a regular normal person waiting at a bus stop. In view of the above, there are no circumstances which are in existence to award punitive or exemplary compensation to the petitioner. However, there being procedural irregularity, inasmuch as no document has been produced to establish as to why the petitioner was handcuffed, this Court is only left to assume things which is not permissible either in favour of the petitioner or in favour of the respondents. As afore observed, it was but



WP No. 115362 of 2019

required for the concerned police officer to record the reasons in writing in the case dairy as to why the petitioner was required to be handcuffed.

13.5. In the present case, there being no justification which has been provided by the respondents for handcuffing the petitioner since neither any objections are filed nor is any affidavit filed by the Arresting Officer.

13.6. It is clear that from and on behalf of the State there is no defence to the allegations made against the Arresting Officer. The compact disc which has been produced has also been dealt with hereinabove.

13.7. Apart from the petitioner stating that the petitioner is a student of Law and that his reputation has got affected adversely by him being handcuffed, there is no other statement made or evidence produced by the petitioner to



WP No. 115362 of 2019

establish the nature and kind of damage caused.

13.8. The petitioner has claimed a sum of Rs.25 lakhs as a compensation, I am of the considered opinion that the said amount cannot be awarded taking into consideration that the petitioner was a student and that the arrest was made in furtherance of non bailable warrant which had been issued; the arrest being proper; the only question being handcuffing of the petitioner not being required, I deem it fit to award a sum of Rs.2 lakhs as compensation to the petitioner payable by the State within a period of six weeks from the date of receipt of a copy of this order with liberty to the state to recover the same from the delinquent officers.



WP No. 115362 of 2019

13.9. Hence, I pass the following:

ORDER

- i. The Writ Petition is allowed.
- ii. The respondent No.1-State is directed to pay a sum of Rs.2 lakhs as compensation to the petitioner within a period of six weeks from the date of receipt of copy of this order.
- iii. No person whether he be an accused, under trial prisoner or convict shall be handcuffed unless the reason for the same is recorded in the case dairy and/or the relevant record as to why such a person is required to be handcuffed.
- iv. If any accused is produced before a Court after arrest, it shall be the duty of the said Court to among other things enquire as to whether the said person had been



WP No. 115362 of 2019

handcuffed or not. If the person were to respond in the affirmative, the Court would have to ascertain the reasons for such handcuffing and to decide on the validity or otherwise of such handcuffing.

v. If an under trial prisoner is produced before the Court, it shall be the duty of the Court to enquire as to whether he was handcuffed or not and then if the person were to respond in the affirmative, the Court would have to ascertain the reasons for such handcuffing and to decide on the validity or otherwise of such handcuffing.

vi. The trial Court shall endeavor as far as possible to avoid physical appearance of the under trial prisoner and permit the under trial prisoner to appear through video conferencing. Only in the event of the Court being of the opinion that the



WP No. 115362 of 2019

physical presence of the accused is required in Court, then the Court could direct for such physical presence by a reasoned order.

- vii. As far as possible, permission to handcuff an under-trial prisoner would have to be taken prior to the production of the under trial prisoner before the Court and obtain an order for handcuffing from the said Court. If no such permission is applied for and under trial prisoner were to be handcuffed, the concerned police officer would be taking a risk of such handcuffing being declared illegal and action being taken against them.
- viii. The contention of the learned HCGP that the handcuffing of the petitioner was resorted to since there were not enough police personnel to safeguard and prevent



WP No. 115362 of 2019

the escape if any is no excuse at all. It is for the State to equip all police stations with adequate and necessary police personnel required for the purpose of discharge of the duties and obligations of the State.

- ix. The learned HCJP pointed out that there are several vacancies. If that be so, it is for the State to fill up those vacancies at the earliest. The learned HCJP is directed to bring to the notice of the Director-General of Police and the Principal Secretary Home Department about the above observations so as to prepare a plan and complete the recruitment in a time bound manner.
- x. The Director General of Police shall also endeavor to make available body cameras to all the police officers entitled to arrest a



WP No. 115362 of 2019

person, so that the manner of arrest is recorded by such body cameras. The camera shall also be equipped with microphone to record the conversations that take place at that particular point of time. The video recording as also audio recording shall be retained atleast for a period of one year from the date of recording. A Standard Operating Procedure shall be prepared by the Director General of Police in this regard and suitable training to be provided to such officers.

- xi. Though the above petition is disposed, re-list on 7th November 2022 to report Compliance with the above directions.

**Sd/-
JUDGE**

Prs*